

OFFICE OF CONSUMER ADVOCATE

COMMONWEALTH OF PENNSYLVANIA

555 Walnut Street 5th Floor, Forum Place

Harrisburg, PA 17101-1923

IRWIN A. POPOWSKY

Consumer Advocate

(717)

783-5048

(Fax) 717-

783-7152

August 15, 2005

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

In the Matter of:
IP-Enabled Services
WC Docket No. 04-36
E911 Requirements for IP-Enabled
Service Providers
WC Docket No. 05-196

Dear Ms. Dortch:

Enclosed for filing please find Comments of the National Association of
State Utility Consumer Advocates in the above-referenced matter.

Please feel free to contact me if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Shaun A. Sparks".

Shaun A. Sparks

Assistant Consumer Advocate

Enclosure

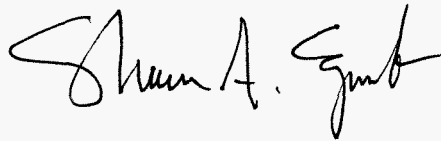
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	:	
	:	
IP-Enabled Services	:	WC Docket No. 04-36
	:	
E911 Requirements for IP-Enabled Service Providers	:	WC Docket No. 05-196
	:	

I hereby certify that I have this day served a true copy of the foregoing document, Comments of the National Association of State Utility Consumer Advocates, upon parties of record in this proceeding.

Dated this 15th day of August, 2005.

Respectfully submitted,



Shaun A. Sparks
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048

*85476

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 04-36
IP-Enabled Services)	
)	WC Docket No. 05-196
E911 Requirements for IP-Enabled Service)	
Providers)	

**COMMENTS OF THE NATIONAL ASSOCIATION
OF STATE UTILITY CONSUMER ADVOCATES**

Philip F. McClelland
Senior Assistant Consumer Advocate
Shaun Sparks
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
Phone: (717) 783-5048

Rob McKenna
Attorney General
Robert W. Cromwell, Jr.
Assistant Attorney General
Public Counsel Section
Washington State Attorney General
900 Fourth Ave., Suite 2000
Seattle, WA 98164-1012
Phone: (206) 464-6595

David C. Bergmann
Assistant Ohio Consumers' Counsel
Chair, NASUCA Telecommunications
Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Phone: (614) 466-8574
Fax: (614) 466-9475

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone: (301) 589-6313
Fax: (301) 589-6380

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I. INTRODUCTION AND EXECUTIVE SUMMARY

On June 3, 2005 the Federal Communications Commission (“Commission” or “FCC”) released its order requiring interconnected Voice over Internet Protocol (“VoIP”) providers to make enhanced 9-1-1 (“E9-1-1”) services available to their customers within 120 days of the publication of the order in the Federal Register and requiring such providers to certify that they have done so.¹ The Commission concurrently issued a notice of proposed rulemaking (“NPRM” or “Notice”) requesting comments on a range of issues relating to E9-1-1 service availability to the customers of VoIP providers (“E9-1-1 VoIP”).

The National Association of State Utility Consumer Advocates (“NASUCA”)²

¹ See *First Report and Order and Notice of Proposed Rulemaking*, FCC 05-116, 20 FCC Rcd 10245 (June 3, 2005) (“Order”), ¶ 1. The Order was published in the Federal Register on June, 29, 2005. 70 Fed. Reg. 37,273 (June 29, 2005). In the Order, the Commission describes E9-1-1 service in conjunction with the various equipment and providers involved in provisioning E9-1-1 service:

In a typical implementation, the Wireline E911 Network includes the Selective Router, which receives 911 calls from competitive and incumbent LEC central offices over dedicated trunks. The Selective Router, after querying an incumbent LEC-maintained Selective Router Database (SRDB) to determine which PSAP serves the caller’s geographic area, forwards the calls to the PSAP that has been designated to serve the caller’s area, along with the caller’s phone number (ANI). The PSAP then forwards the caller’s ANI to an incumbent LEC maintained Automatic Location Information database (ALI Database), which returns the caller’s physical address (that has previously been verified by comparison to a separate database known as the Master Street Address Guide (MSAG)). The Wireline E911 Network thus consists of: the Selective Router; the trunk line(s) between the Selective Router and the PSAP; the ALI Database; the SRDB; the trunk line(s) between the ALI database and the PSAP; and the MSAG.

Notice at ¶ 15. Although the Order does not require interconnected VoIP service providers to provision E9-1-1 via any particular technology, the Order does require interconnected VoIP providers to provision this type of E9-1-1 functionality to consumers by the required date.

² NASUCA is a voluntary, national association of 44 consumer advocates in 41 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

applauds the Commission for its action in the June 3 Order. Access to adequate 9-1-1 emergency services is vital to public safety and welfare throughout the United States. This Order is an important step in ensuring that all citizens have access to critical emergency services via dialing 9-1-1 on all telephones. NASUCA looks forward to working with the Commission, VoIP service providers, the states, and with emergency services providers to bring about this important national priority in a timely and effective manner.³

NASUCA makes the following recommendations regarding E9-1-1 VoIP:

- While NASUCA believes the Commission should ultimately classify VoIP service as a telecommunications service subject to Title II regulation, it nonetheless supports the Commission's exercise of its jurisdiction to achieve this important goal.
- The Commission should extend its E9-1-1 VoIP requirements to all VoIP services that access, or are accessible from, the public switched telephone network ("PSTN").
- The Commission should establish measurable goals with fixed deadlines pursuant to its Title I and Title II authority for the full deployment of E9-1-1 VoIP.

NASUCA's recommendations will help ensure that consumers receive the maximum benefit from VoIP services, including access to E9-1-1 service. NASUCA urges the Commission to adopt these recommendations.

³ This would include participating on the Commission's recently-announced E9-1-1 task force. News Release, FCC, *FCC Announces Joint Federal/State VoIP Enhanced 911 Enforcement Task Force* (July 25, 2005) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260150A1.doc).

II. THE COMMISSION HAS JURISDICTION TO REQUIRE UNIVERSAL E9-1-1 VOIP SERVICE.

As the FCC makes clear in its Order, it has previously determined that services in the nature of “interconnected VoIP services” are interstate in nature.⁴ One impact of that determination, while perhaps unintentional, was to strip the states of the ability to administer state 9-1-1 emergency services programs as those programs impact retail VoIP services.

NASUCA supports the FCC’s efforts in this Order to require interconnected VoIP service providers to provide E9-1-1 services to consumers. While NASUCA continues to recommend that the best means to achieve that goal is for the FCC to ultimately classify VoIP service as a “telecommunications service” subject to the Commission’s regulatory jurisdiction pursuant to its authority under Title II and to allow state jurisdiction over E9-1-1 requirements,⁵ NASUCA believes that the Commission is correct to exercise its Title I authority for the purpose of requiring adequate access to E9-1-1 emergency services.

A. The FCC Has Title I Ancillary Jurisdiction Over Interconnected VoIP Services.

The United States Supreme Court has recognized that the Communications Act confers “ancillary” jurisdiction on the FCC.⁶ NASUCA agrees with the FCC that in order to promulgate regulations pursuant to this jurisdiction, the

⁴ Order at ¶ 28.

⁵ For purposes of brevity NASUCA requests that the Commission consider as incorporated by reference NASUCA’s prior comments, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36 (rel. May 28, 2004) at 9-38 (“NASUCA Comments”).

⁶ *United States v. Southwestern Cable Co.*, 392 U.S. 157, 167, 178 (1968).

FCC must show that first that the subject of those regulations is covered by the general jurisdictional grant of Title I, and second that the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.⁷

Regarding the first showing, those courts have written that the FCC's general grant of jurisdiction encompasses "all interstate and foreign communication by wire or radio."⁸ While NASUCA does not agree that "interconnected VoIP services" are *exclusively* interstate in nature, NASUCA submits that it is beyond question that "interconnected VoIP services" may *involve* interstate communications by wire. Indeed, the Order acknowledges that "there are generally intrastate components to interconnected VoIP service and E9-1-1 service."⁹ In this regard, NASUCA supports the FCC's determination that it has such jurisdiction over interconnected VoIP services. NASUCA makes clear, however, that it supports the FCC's determination only to the extent that it is not necessary to show that these services are *exclusively* interstate in nature in order for the FCC to exercise its ancillary jurisdiction to require these services to provide fully functional E9-1-1 emergency dialing services in a timely manner.

Regarding the second prong of the standard – that the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities – NASUCA agrees with the FCC that the Act mandates that the FCC promote the safety of life and property through the use of wire and radio communication.¹⁰ Requiring "interconnected VoIP services" to provide fully

⁷ Order at ¶ 27. See also *American Library Assoc. v. FCC*, 406 F.3d 689, 692-693 (D.C. Cir. 2005) ("*American Library*").

⁸ *Id.* at 692-93.

⁹ Order at ¶ 29, fn. 95.

¹⁰ *Id.* at ¶ 29.

functionally E9-1-1 services in a timely manner reaches to the core of this mandate.¹¹ It is unfortunate that the FCC now has tangible evidence from incidents in Texas, Connecticut and Florida to show there is an immediate need to require interconnected VoIP services to provide functional E9-1-1 service.¹²

B. The Commission's Exercise Of Title I Ancillary Jurisdiction To Require Interconnected VoIP Services To Provide E9-1-1 Services Does Not Preclude The Commission's Exercise Of Its Title II Jurisdiction Over Interconnected VoIP Services.

The Commission's exercise of its general Title I jurisdiction over interconnected VoIP services does not preclude the Commission from exercising its Title II jurisdiction over those services at a later date. In the Order, the FCC notes that it has invoked its Title I jurisdiction to support its universal service funding regime, which is clearly aimed at providing universal access to the PSTN, a Title II service.¹³ In addition, the FCC provides in the Order that:

[t]his Order, however, in no way prejudices how the Commission might ultimately classify these [interconnected VoIP] services. To the extent that the Commission later finds these services to be telecommunications services, the Commission would have additional authority under Title II to adopt these rules.¹⁴

NASUCA agrees with the FCC that Title II, in addition to Title I, provides authority for the FCC to enact these regulations, and as NASUCA has made clear, NASUCA believes that Title II would provide more satisfactory means for the FCC to

¹¹ *Id.*

¹² *In the Matter of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking*, WC Docket Nos. 04-36, 05-196, Statement of Commissioner Michael J. Copps, (May 19, 2005).

¹³ Order at ¶ 29.

¹⁴ Order at ¶ 26.

accomplish the goal it seeks to achieve in this Order. NASUCA will expand below on why Title II would be preferable. Nevertheless, NASUCA supports the FCC in its determination that this proceeding does not require classification of interconnected VoIP services as Title I or Title II services.

C. Regulating Interconnected VoIP Service Provider's E9-1-1 Obligations under the FCC's Title II Authority Is Preferable To The FCC's Regulating E9-1-1 Obligations Under Title I.

While NASUCA supports the Commission's decision to implement E9-1-1 requirements for VoIP providers under Title I, NASUCA encourages the FCC to exercise Title II jurisdiction over VoIP services providers. Exercising Title II jurisdiction over VoIP will clearly establish the Commission's jurisdiction to implement the policy goals of protecting public health, safety and welfare through promotion of E9-1-1. Title II regulation of VoIP services will also solve many of the technical and jurisdictional issues that the Commission faces as it attempts to regulate this service under Title I.

States have established 9-1-1 emergency service funding and administration regimes under circumstances where most 9-1-1 emergency services are provided via common carriers regulated under the FCC's Title II authority.¹⁵ Putting aside technical issues surrounding E9-1-1, it may profoundly impact the states should the FCC choose to adopt different definitional schemes for some providers of voice communications, i.e., VoIP providers. There are likely few states whose statutes and regulations would recognize a new regulatory classification of "interconnected VoIP service" or the provider of such a service. The same may be said of regulations governing which entities

¹⁵ *Id.* at ¶ 14, fn. 35.

must provide information to public service answering points (“PSAPs”), or which entities have access to local Master Street Address Guides (“MSAGs”).

The FCC should recognize that 9-1-1 emergency services are fundamentally local services provided at the local level, and are in many ways operationally unique from one PSAP to the next. In this regard, NASUCA submits that that FCC’s goal here of “avoiding state-by-state technical and operational requirements that would burden equipment manufactures and providers” does not adequately reflect the disparities among the nation’s PSAPs. The Commission recognized these disparities in the Order:

As the Commission has noted previously, there are a variety of situations existing in the more than 6,000 PSAPs across the nation, including differences in state laws and regulations governing the provision of 911 services, the configuration of wireless systems, the technical sophistication of existing 911 network components, and existing agreements between carriers and PSAPs.¹⁶

NASUCA submits that the FCC’s interconnected VoIP service E9-1-1 regulations should take this aspect of 9-1-1 service into account.

In addition, Title II regulation recognizes the simple reality that voice service is a telecommunications service subject to Title II regardless of whether it is provided over a switched network or a packet based network, or whether the call is carried by a pair of copper wires, a fiber optic loop, or a wireless router. VoIP is generally marketed to consumers as functionally equivalent to traditional telephone service, and in some respects, VoIP may be indistinguishable from traditional service. The ancillary or enhanced services that VoIP makes available can and should be separately classified by the Commission as “information services” subject to Title I, in the same fashion as the

¹⁶ *Id.* at fn. 34.

Commission has previously treated bundled services in the past.¹⁷

Establishing Title II regulation of the voice service provided by VoIP providers who chose to connect to the PSTN will provide for a technologically neutral regulation of voice services. It will also promote the rapid deployment of E9-1-1 service, minimize consumer confusion, and decrease the likelihood of injury or deaths resulting from a lack of E9-1-1 VoIP service.

The Commission could however, use its broad forbearance powers to exempt VoIP services from unnecessary or inappropriate Title II regulations (e.g., economic regulation),¹⁸ just as the Commission has done with commercial mobile radio service (“CMRS”) providers. The current uncertainty regarding the regulatory classification of VoIP voice service does not serve the public interest, the Commission, the companies it regulates, or the customers they serve. In exercising jurisdiction over VoIP services pursuant to its Title II authority, the Commission should not preclude state jurisdiction over VoIP services, particularly in the areas of service quality and consumer protection. Absent enforcement of service quality standards the Commission will see an exacerbation of the “race to the bottom” already being seen.¹⁹

¹⁷ See generally *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review -- Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets*, Report and Order, 16 FCC Rcd 7418 (2001).

¹⁸ 47 U.S.C. § 160(a).

¹⁹ NASUCA Comments at 43-44.

III. NASUCA RESPONSES TO COMMISSION NPRM QUESTIONS.

For purposes of clarity NASUCA has addressed the questions posed by the Commission in its NPRM in sequence, combining similar questions or themes where doing so seemed appropriate.

1. **What additional steps should the Commission take to ensure that providers of VoIP services that interconnect with the nation's PSTN provide ubiquitous and reliable E9-1-1 service? What can the Commission do to further the development of new, automatic user location identification technology?**²⁰

The Commission should establish firm, enforceable deadlines for the full deployment of E9-1-1 service by any VoIP provider that provides access to the PSTN or whose customers can be accessed from the PSTN. While it is not imperative that the Commission detail how this is to be accomplished, it is imperative that the Commission require that it be accomplished in an expeditious manner.

On June 9, 2005, Communications Daily reported that Vonage CEO Jeffery Citron stated that Vonage may seek a waiver of the FCC's requirements in this Order because compliance is "hard and it's expensive."²¹ Regarding Vonage's compliance with the Order, Citron added that "I know we won't; it's not possible."²²

NASUCA believes that even if providing E9-1-1 is difficult or expensive, the cost of *not* providing functional E9-1-1 emergency services on a timely basis simply outweighs these company concerns. In light of recent events in Texas, Connecticut and Florida, the FCC should not condone, support, or enable a disregard for the well-being of

²⁰ Order at ¶¶56-57.

²¹ *Today's News*, Communications Daily (June 9, 2005).

²² *Id.*

consumers.

In addition, the Commission should not create opportunities for regulatory arbitrage in regard to a service as vital as to the public safety as E9-1-1. For example, it is not clear that the instant Order applies to non-broadband VoIP services, as the term “broadband” is currently defined. VoIP services may be provided by multi-system cable operators through a fixed voice grade connection that would not necessarily be classified as a broadband connection under the Commission’s regulations. While NASUCA believes that the large national multiple systems operators (“MSOs”) will provide functional E9-1-1 service in accord with this Order, the Commission should nevertheless make clear that all “interconnected” VoIP service providers must comply with this Order, regardless of whether their services are offered via a broadband connection.

Also, the Commission should make clear that traditional PSTN services that transition to IP formats for all or part of their transport must continue to provide E9-1-1 service, regardless of the fact that those services may not be provided via a broadband connection as that term is defined in the Commission’s regulations. This ensures no degradation of current E9-1-1 service if the transition to IP formats occurs.

2. Should the Commission expand the scope and requirements of this Order?²³

The Commission should expand the scope of its Order to cover VoIP voice services that can access the PSTN, whether directly or indirectly. This is necessary to minimize the risk of additional tragedies. Interconnected VoIP services should not

²³ Order at ¶¶ 56-57.

escape their obligations under the Order via contractual arbitration concerning interconnection with the PSTN. Also, the FCC should be cognizant of the rapidity with which E9-1-1 obligations may change. The Commission should make clear that *any* ability to access the PSTN requires functional E9-1-1 service.

For example, in early 2004, the FCC determined that Pulver.com's Free World Dialup ("FWD") was an information service.²⁴ At the time the Pulver Order was adopted, it appeared that the FCC was under the impression that FWD had no contact with the PSTN. Indeed, in her statement attached to the Pulver Order Commissioner Abernathy wrote "this classification and our accompanying assertion of federal jurisdiction simply reaffirm what many assumed to be the case — that Free World Dialup, which makes no use of the public switched telephone network or conventional telephone numbers, is not subject to common-carrier-type regulations."²⁵ As a part of that determination, however, the FCC specifically declined to extend its information service holding "to the legal status of FWD to the extent it is involved in any way in communications that originate or terminate on the public switched telephone network."²⁶

Here, NASUCA understands the FCC to once again use the origination and termination of calls to the PSTN to serve as part of a litmus test of whether packet-based "information services" are in fact "interconnected VoIP services" for the purpose of

²⁴ See *Petition for Declaratory Ruling That Pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307 (2004) ("*Pulver Order*").

²⁵ *Id.*, Statement of Commissioner Kathleen Q. Abernathy.

²⁶ *Id.* at ¶ 2 fn. 3. The FCC acknowledged in the *Pulver Order* that Pulver.com counsel provided the FCC with an ex parte communication that stated that third parties could provide FWD subscribers with connectivity to the PSTN "without Pulver's permission." *Id.*

requiring E9-1-1 functionality.²⁷ NASUCA submits that these types of tests will not only be difficult to administer, but will also be prone to arbitrage.

FWD members may now have a very different experience in regard to PSTN connectivity than at the time the FCC adopted the Pulver Order. Currently, FWD encourages its members to purchase programs that provide connectivity to the PSTN via Pulver affiliate LibreTel.²⁸ On its homepage, LibreTel identifies itself as “a pulver.com company.”²⁹ FWD members who also subscribe to LibreTel for a fee may obtain connectivity to the PSTN via NANPA numbers in the following US cities and area codes:

Boston, MA (617); Cambridge, MA (617); Hartford, CT (860); New York, NY (212); Brooklyn, NY (718); Nassau Cty, NY (516); Princeton, NJ (609); Atlanta, GA (404); Key West, FL (305); Miami, FL (305); Orlando, FL (321); Herndon, VA (703); Washington, DC (301); Baltimore, MD (443); Gaithersburg, MD (240); Roseville, CA (916); Visalia, Fresno, Clovis, CA (559); Redding, Davis, Chico, CA (530); Tracy, Stockton, Merced, Turlock, Modesto, Lodi, CA (209); Reno, Carson City, NV (775)³⁰

NASUCA points out that these areas include very large metropolitan statistical areas (“MSAs”) and contain millions of people. While the materials on the LibreTel website are unclear as to whether FWD members may both originate and terminate calls to the PSTN, it is fair to assert that the FWD/LibreTel service offering should comply with this Order.

The FCC’s E9-1-1 regulations should prevent arbitrage, as this is exactly the problem that has endangered the public safety in regard to VoIP voice services. The FCC

²⁷ Order at ¶ 24.

²⁸ See <http://www.freeworlddialup.com/> (accessed August 2, 2005); <http://www.libretel.com/> (accessed August 2, 2005).

²⁹ See <http://www.libretel.com/index.php> (accessed August 2, 2005).

³⁰ See <http://www.libretel.com/index.php?sect=107&PHPSESSID=97a9a3bc2c056de4510cb0ceaf25264c> (accessed August 2, 2005).

should prevent this by expanding the scope of its Order to cover all VoIP services that access the PSTN, whether directly or indirectly.

3. What role would be most productive for the Commission to play in facilitating the adoption of auto location technologies?³¹

The Commission should not attempt to pre-judge technology. Instead, the Commission should establish firm, enforceable deadlines for compliance and allow the VoIP providers to find the solutions that best fit their customer's needs. An interim solution could be for the user to be required to supply location information if the VoIP provider has reason to know that the customer has changed their location since they last utilized the service (through packet header information, etc.).

4. Should the Commission require all terminal adapters or other equipment used in the provision of interconnected VoIP service sold as of June 1, 2006 to be capable of providing location information automatically, whether embedded in other equipment or sold to customers as a separate device? Under what authority could the Commission take such actions?³²

The Commission should promulgate technologically neutral regulations that establish standards for providing E9-1-1 service that can be met by different providers in different ways. For example, some VoIP providers may decide to automatically obtain location information through the use of geostationary positioning satellite ("GPS") technology in the customer premises equipment ("CPE"). Others may chose to implement a software solution that conditions use of the service on the customer

³¹ Order at ¶¶ 56-57.

³² *Id.*

verifying their location, or providing a new location if it has not been previously registered (a drop-down menu of locations on the client software's user interface would be one example of this approach). The goal will be accomplished either way.

Should the Commission choose to mandate that VoIP providers install GPS technology in customer CPE, the Commission may do so under its Title I authority. Title I provides jurisdiction for this requirement because the requirement is directly related to the transmission of communications while those communications are occurring, and not to the content of the communications.

5. **Should E9-1-1 obligations apply to VoIP services that enable users to terminate calls to the PSTN but do not permit users to receive calls that originate on the PSTN? Should E9-1-1 obligations apply to the converse situation in which a VoIP service enables users to receive calls from the PSTN but does not permit the user to make calls terminating to the PSTN?**³³

As NASUCA discussed above, the Commission should promulgate a uniform, technologically neutral requirement for E9-1-1 VoIP service availability in order to diminish the risk of consumer confusion or the occurrence of tragedies as a result of the lack of E9-1-1 service. As has already been documented in several states, customers facing a threat to themselves or their family members will remember to dial "911" but tragically may not remember, or may not know, that the telephone receiver they have picked-up does not provide E9-1-1 service. Part of the public health, welfare, and safety benefit to a universal E9-1-1 VoIP service requirement is that it protects not only the customer who is paying for the service, but also their children, family members,

³³ *Id.* at ¶58.

and social guests, or in the case of businesses, their customers and employees.

6. Are there any other services upon which the Commission should impose E9-1-1 obligations, including any IP-based voice services that do not require a broadband connection?³⁴

If a VoIP provider allows its customers to connect to, or be reached from, the PSTN in any fashion, the obligation to provide E9-1-1 service should follow. The Commission should not create opportunities for regulatory arbitrage with a service as vital as to the public safety as E9-1-1.

As noted previously, it is not clear that the Order applies to non-broadband VoIP services, as the term “broadband” is currently defined. The FCC should not apply its E9-1-1 requirements based upon particular technologies. As the technological means of offering these services may change, consumers should not lose the assurance of E9-1-1 access that is otherwise required by this order. NASUCA points out that VoIP voice services may be provided by multi-system cable operators through a connection that would necessarily be classified as a broadband connection under the Commission’s regulations. While NASUCA believes that large national MSOs will provide functional E9-1-1 service in accord with the Order, the Commission should nevertheless make clear that all “interconnected” VoIP service providers must comply with this Order, regardless of whether their services are offered via a broadband connection.

Also, the Commission should make clear that traditional PSTN services that transition to VoIP formats for all or part of their transport must continue to provide E9-1-1 service, regardless of the fact that those services may not be provided via a broadband

³⁴ *Id.*

connection as that term is defined in the Commission's regulations.

7. **Does the Commission need to adopt regulations in addition to those imposed by today's Order to ensure that interconnected VoIP service customers obtain the required level of E9-1-1 services?**³⁵

This will best be judged by the degree of compliance with the Commission's Order. If there is significant non-compliance, additional regulations may be necessary. In any event, the Commission should be prepared to enforce its regulations in the public interest.

8. **It is our expectation that end-user updates of Registered Location information will take place immediately. If this is not feasible, what performance standards should the Commission adopt regarding the length of time between when an end user updates Registered Location information and when the service provider takes the actions necessary to enable E9-1-1 from that new location? How should such requirements be structured?**³⁶

The Commission's expectation of an immediate update may be too strict a requirement for both providers and emergency personnel, and may create an unrealistic expectation on the part of consumers. While the Commission should impose an enforceable requirement, that requirement should allow for some time to update the various databases that are used in the provision of E9-1-1 service. A deadline of 48 hours would represent a more reasonable approach. Those unwilling or unable to comply should face license revocation due to the risk to public health, safety and welfare posed

³⁵ *Id.* at ¶59.

³⁶ *Id.*

by this problem. Absent strict enforcement of this requirement, NASUCA fears additional deaths will result.

9. How should providers of interconnected VoIP service satisfy the requirements we adopt today in cases in which a subscriber's Registered Location is not associated with a street address?³⁷

Interconnected VoIP service providers can comply with the Commission's Order by requiring the user to provide location information as a pre-condition of using the service each time it is accessed. Another option may be to require location information from the user each time the CPE is moved (unplugged and reconnected). While it may be possible to do so as part of the client software's user interface, when CPE is provided it should be done through GPS technology in the CPE, much like that used in some wireless E9-1-1 provisioning.

10. What requirements, if any, should we impose on providers of interconnected VoIP service in geographic areas served by PSAPs that are not connected to a Selective Router?³⁸

The Commission's E9-1-1 requirements should be universal. Regardless of the ability of a PSAP to access the data, the Commission should require interconnected VoIP providers to supply PSAPs with this information. While not all PSAPs are capable of receiving and processing E9-1-1 data at this time, it is expected that PSAPs will upgrade in the future, and would be able to process E9-1-1 data at that time. In addition, the Commission should avoid creating a system of geographic differences among VoIP voice

³⁷ *Id.*

³⁸ *Id.*

providers. The Commission should address the question of necessary PSAP upgrades through a separate proceeding. It is not clear that the Commission can overcome all administrative difficulties, such as state legislatures and agencies using E9-1-1 funds for purposes other than the provision of E9-1-1 service.

11. How should the use of wireless broadband connections such as WiFi or WiMax impact the applicability of the obligations we adopt today? Would providers of wireless interconnected VoIP service be more appropriately subject to our existing 911/E9-1-1 rules for CMRS?³⁹

The Commission's rationale for requiring CMRS carriers to provide E9-1-1 service is no less applicable to VoIP providers whose customers utilize non-CMRS wireless networks such as WiFi or WiMax. The Commission's E9-1-1 requirements should be uniform, and technology neutral. In the event a WiFi or WiMax network is used to access VoIP services, the service provider must have a means of providing E9-1-1 service to those customers and must meet the Commission's CMRS E9-1-1 requirements.

12. Should the Commission require VoIP service providers to create redundant systems for providing E9-1-1 services, such as requiring redundant trunks to each Selective Router and/or requiring that multiple Selective Routers be able to route calls to each PSAP?⁴⁰

The Commission should make clear that VoIP service providers are required to work with existing PSAP equipment to provide E9-1-1 functionality to their customers. PSAPs should not be asked to build new systems or to engage in costly upgrades of

³⁹ *Id.*

⁴⁰ *Id.*

existing systems for the sole purpose of accommodating VoIP E9-1-1 functionality.

Regarding trunk issues, the question of the number of trunks, or of how trunks are divided, is a question that must be reserved to the discretion of each PSAP at the local level. The amounts and types of traffic flowing into PSAPs undoubtedly varies widely from one state to the next, and even from one county to the next within the same state.

13. **We also seek comment on whether the Commission should impose additional or more restrictive customer notification requirements relating to E9-1-1 on VoIP providers, and on the sufficiency of our customer acknowledgement requirements.**⁴¹

VoIP providers should configure their systems such that consumers may not place calls until such time as the consumer's E9-1-1 information is loaded into the provider's system, and the VoIP phone is ready to place a 9-1-1 call should it be required to do so. In addition, the Commission should require interconnected VoIP services to provide a conspicuously identifiable link to any 9-1-1 information that is currently embedded in the providers' website. For example, AT&T's homepage has a direct link to a section of its website "911 Emergency Dialing" which provides information such as the type of 9-1-1 offered, if 9-1-1 is available during an outage, and a comparison of AT&T 9-1-1 versus traditional wireline 9-1-1 service.⁴² A direct link would enable consumers to find emergency services dialing information easily, and would more readily provide for consumer education than would the reading of "Frequently Asked Questions" sections or

⁴¹ *Id.*

⁴² See <http://www.usa.att.com/callvantage/index.jsp?soac=69717> (accessed August 10, 2005) (providing home page link titled "911: It's different"). Clicking on that link will take the user to a webpage containing a detailed explanation of the limitations of dialing 9-1-1 on AT&T's VoIP service, and provides instructions on what to do when making such a call. See <http://www.usa.att.com/callvantage/911/index.jsp> (accessed August 10, 2005).

in some cases, performing site searches to obtain 9-1-1 related information. This type of notice should be relatively easy for many interconnected VoIP services to provide since the use of an interconnected VoIP service presumes that internet access is available to the named account holder.

- 14. Should the Commission impose reporting obligations on VoIP service providers other than the compliance letter we impose in today's Order? Should the Commission require interconnected VoIP providers to report what progress they are making in developing ways to locate automatically a user who dials 911?⁴³**

The Commission may require progress reports, but should do so only as part of a systematic monitoring of progress towards a firm deadline for universal implementation of E9-1-1 VoIP automatic location information.

- 15. What role should states play to help implement the E9-1-1 rules we adopt today? Should state and local governments play a role similar to the roles they play in implementing the Commission's wireless 911/E9-1-1 rules?⁴⁴**

The states should continue to provide their important consumer protection role, including implementation of E9-1-1 support in all PSAPs. The Commission should continue to encourage and provide incentives for states to upgrade PSAP capabilities. The Commission should not seek to preempt states from regulating safety and consumer protection issues.

It is imperative that the FCC acknowledge the local nature of 9-1-1 emergency services, and to the extent permitted or required, clearly outline the limits of the FCC's

⁴³ *Id.* at ¶ 60.

⁴⁴ *Id.* at ¶ 61.

authority in this area. For example, the FCC has little or no power to regulate end user 9-1-1 fees, because this function is at the core of the states' tax and police powers. The FCC must make clear to the industry that these matters are local matters, and will be governed at that level.

In regard to 9-1-1 fees, the Commission should require the states to designate one state-wide collection point to which VoIP providers may forward 9-1-1 payments. This will enable VoIP providers to efficiently process those payments, and will assist in the elimination of confusion regarding the appropriate entity to which VoIP providers should remit 9-1-1 fees collected from subscribers.

In addition, while NASUCA supports the FCC's efforts here, NASUCA is concerned regarding the enforcement of the rules the Commission has established. The Commission should be clear that, much like the slamming rules, the FCC will permit the states to enforce the regulations it establishes here. That way, emergency responders and VoIP providers will be able to develop efficient solutions to problems that may be highly localized in nature. Requiring all disputes to be referred to the Commission may frustrate this important effort by introducing unnecessary delay and confusion. Only if local or state authorities are unable to resolve these important issues should the FCC assert jurisdiction. Otherwise, the FCC should encourage and enable local and state authorities to resolve these important issues.

NASUCA also points out that access to the MSAGs used in the provision of E9-1-1 services is controlled at the local level. It is imperative that the FCC recognize the level of local control and maintenance of the systems on which reliable 9-1-1 service depends, particularly the MSAG. The Commission must recognize the role of the states,

counties, and even municipalities or townships (in some states) in the operation of this aspect of emergency services programs.

16. Should the Commission adopt any customer privacy protections related to provision of E9-1-1 service by interconnected VoIP service providers?⁴⁵

The Commission must protect consumer privacy, particularly as it relates to location information. Any commercial use of such data should be allowed only with the express approval of the customer. Customer proprietary network information (“CPNI”) for mobile VoIP customers may well include their present location, deserves the highest protection due to the risk to physical safety.

In regard to the proposed E9-1-1 system, the Commission must take particular care regarding the broad scope of the information that may be available. The Commission should make certain that it considers the consumer privacy implications of full access to consumer medical information, and also involves consumers in any discussions of what the limits should be on the use and access to that data.

⁴⁵ *Id.* at ¶62.

17. **Wireline and wireless telecommunications carriers are already subject to privacy requirements.⁴⁶ Should the Commission adopt similar privacy protections in the context of interconnected VoIP service? Under what authority could we adopt such rules?⁴⁷**

The Commission should do so pursuant to its Title II authority.

18. **Are there any steps that the Commission needs to take to ensure that people with disabilities who desire to use interconnected VoIP service obtain access to E9-1-1 services? What is the basis of the Commission's authority to impose any obligations that commenters feel are warranted?⁴⁸**

The Commission should set a firm, enforceable deadline for VoIP providers to fully implement the disability access requirements of the Act for those dependant upon text telephones ("TTY") and telecommunications relay services ("TRS").⁴⁹

IV. CONCLUSION

NASUCA supports the FCC's effort to have VoIP service providers ensure that consumer have access to E9-1-1 emergency services dialing. NASUCA further submits that the FCC should do so under its Title II Authority. The Commission will solve many

⁴⁶ Section 222 of the Act prevents telecommunications carriers from disclosing CPNI, including customer location information, without customer approval. *See* 47 U.S.C. § 222(c)(1). The Act excludes from the definition of CPNI a customer's address that is listed in a directory. *See* 47 U.S.C. § 222(h)(3). We also note that Congress in the 911 Act provided certain privacy protections related to wireless carriers' ability automatically to obtain and transmit precise customer location information, and exceptions from those rules for the provision of E911 service. *See* 911 Act, Pub. L. No. ____, § 5 (amending section 222 by, *inter alia*, adding new sections 47 U.S.C. § 222(d)(4), (f) (concerning wireless location information) and 47 U.S.C. § 222(g) (concerning subscriber information)). Also, in redesignating former section 47 U.S.C. § 222(f) as section 47 U.S.C. § 222(h), the 911 Act amended an existing definition and added new definitions. *See* 47 U.S.C. § 222(h)(1)(A)(4) through (7). We note that section 222 applies to telecommunications carriers. Interconnected VoIP service providers to date have not been classified as telecommunications carriers under the Act.

⁴⁷ Order at ¶ 62..

⁴⁸ *Id.* at ¶63.

⁴⁹ 47 U.S.C. §§ 225, 251(a)(2), 255.

of the problems related to the provision of 9-1-1 services at both the state and federal level by simply classifying interconnected VoIP services as a telecommunications service subject to Title II regulation and extend its E9-1-1 VoIP requirements to all VoIP services that access the PSTN. The Commission should also establish measurable goals with fixed deadlines pursuant to its Title II authority for the universal deployment of E9-1-1 VoIP. Only by doing so will the public health, safety, and welfare be protected.

Respectfully submitted,

Philip F. McClelland
Senior Assistant Consumer Advocate
Shaun Sparks
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
Phone: (717) 783-5048

Robert W. Cromwell, Jr.
Assistant Attorney General
Public Counsel Section
Washington State Attorney General
900 Fourth Ave., Suite 2000
Seattle, WA 98164-1012
Phone: (206) 464-65958

David C. Bergmann
Assistant Ohio Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Phone: (614) 466-8574
Fax: (614) 466-9475

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone: (301) 589-6313
Fax: (301) 589-6380

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